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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/593,824	11/30/2006	John Greg Hancock	14072 US00	4632
9629 7590 02/25/2010 MORGAN LEWIS & BOCKIUS LLP 1111 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004			EXAMINER EDWARDS, NEWTON O	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 02/25/2010	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/593,824	<b>Applicant(s)</b> HANCOCK ET AL.	
	<b>Examiner</b> N. EDWARDS	<b>Art Unit</b> 1794	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 4,5,7 and 9-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,6 and 8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/21/10</u> . | 6) <input type="checkbox"/> Other: _____  |

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1. Applicant's arguments filed 1/21/10 have been fully considered but they are not persuasive.

Applicant urges that 1) claim 1 as amended recite that melting point difference between the first and second polymers is **less than** 10 degree C. While Bruner shows no overlap teaching at **least about** 10 degrees C.

It appears that Applicant is in clear error because Bruner teaching of **about 10 degrees C** anticipate by overlapping **less than 10 degree C**, as now amended. Also New claimed range is obvious in view of Burners since the composition of the claim1 and those of the reference are identical in all other respect.

Applicant urges that on one hand 2)Asher does not describe the **dual requirement** of claim 1 1) the first and second polyester are not the same and 2) the difference in the melt point of between the first and second polyester is **less than** 10 degrees C.

First of all, Applicant elected (see response dated 9/10/09 and claims 2 and 6) and claims the polymers which meet the so called dual requirement in claim1 and **PET or polyethylene terephthalate in claim 2 and PBT or polybutylene terephthalate in claim 6**. Secondly, Applicant has failed to address the issue of melt point difference in the rejection of record.

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Applicant urges on the other hand 3) Applicant's claims don't encompass a PCT core and PBT sheath because such a structure does not meet the dual requirement supra.

Really, so your claims 2 of PET and claim 6 of PBT which was elected and claimed by Applicant on 9/1/09 along with the spec at paragraphs 18,19, and 26 would be non-enabled and inadequately described by your admission.

Applicant suggests that 4) Claim 1 of Asher'608 appears to recite a sheath core structure in polymer (a blend of PBT and PET) is the same both the sheath and core.

See example 1 and 2 of Asher which support the Primary Examiner's rejection of record.

Applicant concludes that 5) Asher'148 does not anticipate claims for the same reason as Asher'608 supra.

See response above to arguments 2, 3, and 4 for a response.

Applicant concludes that 6) Iguro can remedy the deficiencies present in Asher, Asher'608. Accordingly the Examiner has not presented a prima facies case of obviousness.

Asher and Asher'608 are addressed above and in the office action. Iguro teaches it is well in the art of bicomponent fibers to treat PET with an adipic acid modifier in order to

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copolymerize the PET which improves dimensional stability and enhances dyeability of the fiber.

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim1 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bruner (US 2003/0005997) for reason of record.

4. Claims1, 2, 6, and 8 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Asher (US 5,776,608) for reason of record and below.

In the alternative since composition of the claims (PET and PBT) and those of the reference are identical in all other respect, there exist a reasonable expectation of success that Asher polyesters (PET and PBT with carbon black) posses the same melt point difference as recited in claim 1.

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5. Claims 1,2,6, and 8 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Asher '148 (US 5,698,148) for reason of record and below.

In the alternative since composition of the claims (PET and PBT) and those of the reference are identical in all other respect, there exist a reasonable expectation of success that Asher polyesters (PET and PBT with carbon black) posses the same melt point difference as recited in claim 1.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Asher '148 (US 5,698,148) or Asher (US 5,776,608) taken with Iguro (US 6,710,242) for reason of record.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The cited prior art show adipic acid improves dimensional stability and dyeability in polyester fiber.

Any inquiry concerning this communication should be directed to Primary Examiner Edwards at telephone number (571)272-1521.

/N Edwards/  
Primary Examiner  
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